UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
SAN FRANCISCO, CALIFORNIA

O'KEEFE DRILLING CO., INC.,
Respondent

and **Case 19-CA-29222**

INTERNATIONAL ASSOCIATION OF OPERATING ENGINEERS, LOCAL 400, AFL-CIO,
Charging Party Union

Daniel R. Sanders, Esq.,
for the General Counsel
Donald C. Robinson, Esq.,
for the Respondent
Mike Jonas,
for the Charging Party Union

DECISION [1]

Albert A. Metz, Administrative Law Judge. The issues are whether the Respondent violated Section 8(a)(1) and (5) of the National Labor Relations Act by unilaterally increasing employees' per diem rates and wages, and by delaying or refusing to supply certain information to the Union. On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the parties, I make the following findings of fact.

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[1] This matter was heard at Butte, Montana, on November 16-17, 2004.

I. JURISDICTION

The Respondent, a State of Montana corporation, is engaged in the business of water drilling and mineral exploration drilling for mining companies in Montana, Nevada, and Arizona. The Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. FACTS

The Union has represented a unit of the Respondent's drilling and machine shop employees for at least 30 years. The Parties' last collective-bargaining agreement expired on December 31, 2002. In 2003 there was a decertification election and the Union was recertified as the collective bargaining agent for the unit employees on September 17, 2003.

Following the Union's recertification that labor organization changed leadership and Mike Jonas was made the lead negotiator for the Union. The Respondent and Jonas had not had dealings previously. The Parties' first negotiation session for a new agreement took place on October 1, 2003, and they subsequently met in December 2003, March and July 2004. During the negotiations the Union was interested in achieving higher wages and investigating possible changes in benefits. The Respondent's initial position was centered upon maintaining the basic terms of the expired agreement.

At the December 1, 2003, negotiation session the Union believed that the Respondent stated it could not afford any increases in wages or benefits. In a letter dated December 4, 2003, the Union countered by requesting various information from the Respondent including items describing the company's profit sharing plan and individual benefits. The Government alleges that the following specific requests were not timely supplied to the Union because the Respondent did not give this information to the Union until June 4, 2004.

PROFIT SHARING

1. A copy of any current profit sharing plan, stock investment plan, 401(k) plan or similar plan affecting any employees including a copy of the current Summary Plan Description.

2. A copy of the Form 5500 for any plan for the last five years.

3. A copy of the financial statements whether quarterly, yearly or in some other periodic basis for each such plan for the last five years.

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5. Any documents which shows the current assets of each such plan including a description of those assets (showing what stocks, bonds or other assets are held).

> 6. A list of the amount contributed by the employer to the plan, the dates of the contributions and the nature of the contribution (whether in cash, stock or otherwise) for the last five years
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> ***
>
> 15. A statement of the benefits of all bargaining unit participants. (R. Exh. 4)

The Respondent's Treasurer, Terry O'Keefe, sent a letter to the Union on December 11 that in part addressed the Union's requests for information. The Respondent's letter states in relevant part:

> We have reviewed your December 4th letter and we do not think going down that road will resolve any issues and will only result in a costly and lengthy delay. We think it is best to put aside your request and concentrate on getting an agreement in place for the men.
>
> ***
>
> As we previously stated at our meeting, we would like to hold the hourly wages at the current rates and to see increases to be in the benefit sections. (R. Exh. 5)

In the December 11 letter the Respondent also set forth a proposal for settlement of the new contract. The proposal offered changes in the following terms and conditions of employment:

- Increase daily meal per diem to $25.00 per day;
- Increase the driller's driving rates from $9.00 per hour to $12.00 per hour
- Increase the clothing and safety allowance to reimburse employees for safety and clothing items up to $400 per year.
- Increase wage rates effective January 1, 2005 by .25 cents per hour (1.5% to 2.5% increase).

The Union's Business Manager, Jim Keane, wrote to O'Keefe on December 16 noting the Respondent's declaration that it was going to "put aside" the Union's request for information. Keane emphasized the Union's responsibility to represent the unit employees and to have access to information that allowed the Union to make informed decisions concerning bargaining. He urged the Respondent to send the requested information "without further delay."

On January 5, 2004, Terry O'Keefe, sent a letter to the Union that provided some of the information the Union had requested. The letter also noted that the profit sharing plan allowed the employees to make directed investments to their individual accounts with designated investment brokers. The Respondent took the position that it "is required to have a signed authorization from the individual participants in order to release their confidential financial information." The Respondent requested the Union to obtain such authorizations so the requested

information could be provided. The Union never obtained any consent forms from employees or made any effort to obtain such consents.

The same letter also stated that Boyd Taylor was the Respondent's CPA and provided the accounting for the profit sharing plan. O'Keefe stated that once the signed authorizations were received from the individual employees the Respondent would authorize Taylor to release the information sought in the Union's December 4 letter under profit sharing items 1, 2, 3, 5, 6 and 15.

The Parties thereafter exchanged further correspondence restating their positions on the relevant information. On March 3, 2004, the Respondent's attorney, Donald C. Robinson, wrote in a letter to the Union that the Respondent "has given you appropriate information and answered all of your relevant questions sufficient for you to continue the bargaining process."

On March 9 the Parties held a negotiation session and the Respondent asked the Union to present its contract settlement proposal to its membership for a vote. The Union refused this request. The Union asked that the Respondent provide explanations regarding its benefit programs. The Union also offered to receive the individual profit sharing information it had requested with personal identifiers, such as names and social security numbers, redacted. The Respondent did not accept that offer.

The Respondent did finally provide most of the requested profit sharing information on June 7, 2004, some six months after the request was made. The Respondent, however, never provided the Union with the requested individual profit sharing information basing its refusal upon the necessity of the Union obtaining individual authorizations from employees before the information was released.

On June 16, 2004, the Respondent, through its attorney, notified the Union in a letter that because the Union had refused to present the Respondent's contract proposal for consideration to the employees, and because of the unexpected increased demand for drilling, the company had unilaterally implemented some of the terms of its contract proposal as follows:

1. Per Diem. Effective January 1, 2004, increase daily meal per diem to $25.00 per day.

2. Driller's Driving Rate. Increase from $9.00 to $12.00 per hour. (This proposal has not yet been implemented.)

3. Clothing & Safety Allowance. Employer will reimburse employees for safety and clothing items up to $400.00 per year as necessary and actually expended. (This proposal has not yet been implemented. It is an increase from $150.00 per year, the allowance for 2004 will be paid in September 2004, per past practice.)

4. Wages. Effective April 15, 2004, increase:

- Helpers' rates by $0.25 per hour
- Driller rates by $0.50 per hour

Additionally, certain employees who had earned entry into a different classification by virtue of their additional tenure received both the per hour increase and the increase resulting from that tenure.

The reason some terms of the proposal were implemented was because it appeared the parties were at impasse with respect to getting a wage and fringe benefit increase to the employees on a prompt and timely basis. It was not intended to interfere with collective bargaining or prejudice the rights of either party. (R. Ex. 17.)

On July 14 the Parties again met and the Union raised certain questions about the Respondent's profit sharing retirement plan. The Parties agreed that the Union would prepare written questions that would be presented to the company's CPA, Boyd Taylor, for a response. The Parties did not discuss the Respondent's implementation of the above-mentioned unilateral changes to the employees' wages and per diem.

On about July 21, 2004, the Union submitted a written list of questions to the Respondent's counsel seeking additional information about the profit sharing program. On September 3, 2004, the Respondent wrote the Union enclosing the information it had sought on July 21.

On September 22, 2004, the Union wrote the Respondent again seeking profit sharing contributions the Respondent had made to employees' individual retirement accounts and the balances in those accounts. The Union reiterated that the Respondent could remove the employee's name and social security number from any documents produced.

The Respondent wrote the Union on September 24 stating that providing anonymous account balance information would still present a risk of disclosure of the identity of individual employees. The Respondent again urged that the Union get individual signed authorizations in order to obtain the information. The Respondent also offered to provide the Union with a number range of the highest and lowest pension balance, and a median or average balance of the profit sharing plans. The Union never responded to the latter proposal.

The Respondent points out that the profit sharing plan is governed by the Employee Retirement Income Security Act (ERISA) of 1974, 29 U.S.C. § 1001, et seq. The Summary Plan Description is also governed by ERISA. The Respondent argues that under ERISA the participating employees are free to reveal the contributions and balances concerning their accounts to the Union if they so choose. The Respondent called two employee witnesses, Frank Parrow and Larry Gagnon, who testified that they desired to keep their profit sharing information confidential.

III. ANALYSIS

A. The Delay in Providing Profit Sharing Information.

An employer has an obligation to furnish a union, upon request, information that is relevant and necessary to its role as the exclusive bargaining representative of unit employees. ***Detroit Edison Co. v. NLRB***, 440 U.S. 301, 303 (1979); ***NLRB v. Acme Industrial Co.***, 385 U.S. 432, 435-436 (1967). A union is entitled to such requested information at the time it makes its request and an employer is obligated to supply the requested information as promptly as possible. ***Pennco, Inc.***, 212 NLRB 677, 678 (1974). In determining what period of time constitutes undue delay in providing information, "the duty to furnish requested information cannot be defined in terms of a per se rule. What is required is a reasonable good faith effort to respond to the request as promptly as circumstances allow." ***Good Life Beverage Co.***, 312 NLRB 1060, 1062 fn. 9 (1993); ***FMC Corp.***, 290 NLRB 483, 489 (1988). If the employer cannot supply the information in a timely fashion it must explain why the information is delayed. ***Beverly California Corp.,*** 326 NLRB 153, 157 (1998). An employer's tardy transmittal of requested information following the filing of an unfair labor practice does not rectify the resulting unfair labor practice. ***Interstate Food Processing***, 283 NLRB 303, 306 (1987).

On December 4, 2003, the Union requested information concerning the Respondent's profit sharing plan. Part of that information (items 1, 2, 3, 5, and 6) was not supplied until June 7, 2004, six months after the request was made. The Respondent defends the delay by asserting that it wanted to supply all of the information at one time and it was awaiting the signed authorizations from employees before accumulating the information. Terry O'Keefe testified that she also did not want to piecemeal the requests to the Respondent's CPA as he was busy.

The Union's information request was for a copy of the profit sharing plan, the ERISA form 5500, financial statements, current assets, and employer contributions. The Respondent does not dispute that the requested profit sharing information was relevant and necessary to the Union's bargaining duties and related to the terms and conditions of the unit employees and I so find.

The Respondent did not seek or obtain the Union's agreement to a postponement in promptly providing the profit sharing information. To the contrary, the Respondent notified the Union that it thought "it is best to put aside" that request for information. That suggestion was immediately rebuffed and the Union continued to demand the information. I find that the Respondent did not meet its obligation of timely supplying the profit sharing information in a reasonable time. I conclude that the Respondent's six month delay in giving the Union that information was a violation of the company's duty to bargain in good faith under Section 8(a)(1) and (5) of the Act. ***Beverly California Corp.,*** 326 NLRB 153, 157 (1998); ***Gloversville Embossing Corp***., 314 NLRB 1258-1259 (1994).

B. Respondent's Refusal to Provide Individual Account Information.

The Union seeks information as to "a statement of the benefits of all bargaining unit participants" regarding the profit sharing plan. Jonas told the Respondent's representatives that this information was being sought in order to compare it with the Union's plan. The Respondent concedes that this information is relevant and necessary to the Union's bargaining obligation. I agree with the Parties and find that the individual profit sharing statements are relevant to the Union's negotiating obligations. The Respondent, however, considers such information confidential (citing ERISA) and has refused to hand it over absent the Union obtaining each employee's written consent. The Government argues that the individual account information which deals with part of the employees' compensation is not confidential and the Union is entitled to it without limitation.

A union is generally entitled to information that is relevant to its collective-bargaining responsibilities. ***NLRB v. Acme Industrial Co.***, 385 U.S. 432 (1967). Information related directly to the wages, hours, and other terms and conditions of employment, such as pension and medical benefits, of bargaining unit employees represented by a union is presumptively relevant to the union's role as collective-bargaining representative and must be furnished upon request. See, e.g., ***Deadline Express***, 313 NLRB 1244 (1994); ***Washington Beef, Inc.***, 328 NLRB 612, 618 (1999) (401(k) plan and health and welfare benefits); ***Maple View Manor***, 320 NLRB 1149 (1996), enfd. mem. 107 F.3d 923 (D.C. Cir. 1997) (health and retirement plans). An employer has a duty to timely furnish such relevant information absent presentation of a valid defense. ***Woodland Clinic***, 331 NLRB 735, 736 (2000). A union's interest in arguably relevant information does not always predominate over all other interests, such as when an employer asserts a legitimate and substantial interest in maintaining confidentiality. ***Detroit Edison v. NLRB***, 440 U.S. 301, 318 (1979).

In determining whether an employer has satisfied its burden of establishing a confidentiality interest, the Board considers factors such as whether the information possesses a "legitimate aura of confidentiality" ***Exxon Co. USA***, 321 NLRB 896, 898-99 (1996) (identities of persons who disclosed prior drug or alcohol-related arrests, convictions, and rehabilitation); ***Johns-Manville Sales Corp.***, 252 NLRB at 368 (employees with a certain medical disorder) and whether another law protects the confidentiality of the information. See ***Postal Service***, 305 NLRB 997, 998 (1991) ("When a defense of confidentiality is raised, the Board must balance the interests of the party seeking the information against those of the party asserting the defense, and may look to other statutes ... as sources of policy to be considered in striking the balance"), citing ***Detroit Edison***, supra, at 318 n.16; ***Goodyear Atomic Corp.***, 266 NLRB 890, 891-92 (1983), enfd. 738 F.2d 155 (6th Cir. 1984) (disclosure of aggregate and statistical medical information not prohibited by Privacy Act); ***LaGuardia Hospital***, 260 NLRB 1455, 1463 (1982) (patient's right of privacy not absolute under state law, which authorizes disclosure when otherwise required by law). If an employer satisfies this burden, it generally has a duty to bargain in good faith over an accommodation of its confidentiality concerns. ***Pennsylvania Power Co.***, 301 NLRB 1104, 1105-06 (1991), citing ***Minnesota Mining & Mfg. Co.***, 261 NLRB 27 (1982), enfd. 711 F.2d 348 (D.C. Cir. 1983). The accommodation may condition disclosure of the information, such as upon the receipt of employee consent, Compare ***Johns Manville Sales***, 252 NLRB 368, 368 (1980) (employer demonstrated that its refusal to disclose the information was made in good

faith because it sought to accommodate the union by submitting the consent forms to a number of employees who had the lung disease, and by turning over to the union the names of those who consented) and ***Detroit Edison v. NLRB***, 440 U.S. 301 (1979) (burden on union minimal where union must merely obtain the consent of employees whose grievances it is processing).The accommodation may also be to redact confidential or individually identifiable information. ***LaGuardia Hospital***, 260 NLRB at 1455-56 (ordering disclosure of only those portions of patient charts containing information relevant to the resolution of grievances, which did not include patient identity information; to preserve patient privacy, Board ordered parties to act in good faith to ensure that patient identities were revealed only to nurses who already had been in a confidential relationship with the patients, and then only if a comparison of the abstracts with the original charts was necessary to verify their accuracy). Accord ***Washington Gas Light Co.***, 273 NLRB 116, 117 n.11 (1984) ("Inasmuch as the Union has never sought the confidential medical information, we shall order the Respondent to furnish the Union the disciplinary records with the medical information deleted."). The union there sought disciplinary records, some of which contained confidential references to employee alcoholism.

If the employer fails to bargain over an accommodation of its confidentiality interest, the Board will normally order bargaining as affirmative relief, since the resolution of disputes by resort to the collective bargaining process best effectuates labor peace. See ***Exxon Co. USA***, 321 NLRB at 899 (although employer confidentiality concerns about "audits" or background checks did not outweigh union's need to know which employees were audited, Board ordered disclosure conditioned on bargaining to a mutually satisfactory confidentiality agreement, protective order, etc.); ***International Protective Services***, 339 NLRB 701, 705 (2003) ("The appropriate remedy is to order the Respondent to bargain regarding the conditions under which the Union's need for relevant information (401(k) plan funds received and distributed to each individual employee) can be satisfied with appropriate safeguards protective of the Respondent's confidentiality concerns.") As the Court explained in ***U.S. Testing Co. v. NLRB***, 160 F.3d 14, 20 (D.C. Cir. 1998), enfg. 324 NLRB 854 (1997):

> An employer is not relieved of its obligation to turn over relevant information simply by invoking concerns about confidentiality, but must offer to accommodate both its concern and its bargaining obligations, as is often done by making an offer to release information conditionally or by placing restrictions on the use of that information.

The Respondent's Profit Sharing Trust, is an employee benefit plan that is subject to ERISA. The Respondent cites that act as one indicia of its confidentiality argument. Section 29 U.S.C. § 1025(a)(1) (2) of ERISA provides that each participant in a benefit plan, who so requests in writing, is entitled to receive in writing a statement indicating:

> (1) total benefits accrued; and
>
> (2) the nonforfeitable pension benefits, if any, which have accrued, or the earliest date on which benefits will become nonforfeitable.

The Act, Section U.S.C. 29§ 1025(a), also notes the confidential nature of the participant's benefits information and provides statutory protection regarding its disclosure:

> (b) Information described in sections 1025(a) ... of this title with respect to a participant may be disclosed only to the extent that information respecting that participant's benefits under title II of the Social Security Act [42 U.S.C.A. § 401 et seq.] may be disclosed under such Act.

The referenced Code of Federal Regulations dealing with Social Security information has various safeguards that limit disclosure of such information as well as notice that such information may be released pursuant to the needs of other agencies. Neither party points to any statutory restriction prohibiting or granting an employee's bargaining agent access to profit sharing/pension information. Examples of the types of disclosure and restrictions on social security information in the Code of Federal Regulations are as follows:

> §401.100 Disclosure of records with the consent of the subject of the record. (a) Except as permitted by the Privacy Act and the regulations in this chapter, or if required by the FOIA, we will not disclose your record without your written consent.

> §401.120 Disclosures required by law. We disclose information when a law specifically requires it. The Social Security Act requires us to disclose information for certain program purposes. These include disclosures to the SSA Office of Inspector General, the Federal Parent Locator Service, and to States pursuant to an arrangement regarding use of the Blood Donor Locator Service. Also, there are other laws which require that we furnish other agencies information which they need for their programs.

I find that the statutes cited by the Parties are not dispositive of the issue of production. I further find that the Board's decisions are the appropriate basis for determining the collective bargaining obligations of the Parties in this instance. The Board in ***International Protective Services***, 339 NLRB 701, 705 (2003) decided the issue of an employer's disregard of a union's request for individual employees' 401(k) information. It is clear from the Board's decision that it considered such information fell within the area of confidentiality and it ordered the employer to bargain about accommodating the union's need for the data. I find that similarly the individual employee's profit sharing pension information sought in the present case has a "legitimate aura of confidentiality" requiring the Respondent's bargaining about accommodation in its production.

In an effort to meet its obligations of accommodation the Respondent offered to produce the individual profit sharing information upon the signed authorizations of the unit employees. The Respondent provided such a form to the Union. The Union never sought to have the unit employees sign the authorizations. The Union suggested the names and social security numbers of the employees be redacted before the Respondent turned over the information. The Respondent would not agree with this arrangement out of a concern that the statements would be decipherable as to the individual involved due to the amounts invested and their time on the job. The Respondent points out that such a speculative identity would be made without the Union having received the prior approval of the individual. The Respondent countered with an offer to provide the Union with a number range of the highest and lowest pension balance, and a median or average balance of the profit sharing plans. The Union never responded to that offer and there

the matter stands. I find that the evidence shows that the Respondent has bargained about accommodation of the Union's receipt of the individual profit sharing information and no agreement has been reached. I further find that the Government has failed to prove by a preponderance of the evidence that the Respondent has violated its accommodation bargaining obligations and conclude that the Respondent has not violated Section 8(a)(1) and (5) of the Act by not producing the individual profit sharing information.

C. Unilateral Increase in Wages and Per Diem.

The Respondent gave unit employees an increase in their per diem meal payments from $22 to $25 commencing January 1, 2004. This change had not been specifically discussed or agreed to in negotiations. The Union did not learn of the increased per diem until the Respondent notified them of that fact in a letter dated June 16, 2004.

The Union was also notified in the June 16 letter that, effective April 15, 2004, the Respondent had awarded the unit employees wage increases of $0.25 for helpers and $0.50 for drillers. The Respondent had never presented such a wage proposal to the Union. In its December 11, 2003, letter the Respondent had only proposed a $0.25 per hour raise for all employees effective January 1, 2005.

The Respondent defends its actions in making these unilateral increases because of what it perceived as a delay in bargaining caused by the Union's actions and the lengthy period since the employees had received a raise in per diem and wages. I have considered these arguments and find that the evidence does not support the contention that the Union somehow unjustifiably delayed the bargaining. Likewise the long period that had passed since employees had received a raise has not been shown to be a legitimate reason for the Respondent, without notifying and bargaining with the Union, to unilaterally raise the per diem and wages of unit employees.

The Respondent's letter of June 16 notifying the Union of the increases states that it considered negotiations at an impasse, thus justifying the increases. It is axiomatic that "An impasse occurs when 'good faith negotiations have exhausted the prospects of concluding an agreement,' that is, whenever negotiations reach a point at which the parties have exhausted the prospects of concluding an agreement and further discussions would be fruitless." ***Laborers Health & Welfare Trust Fund v. Advanced Lightweight Concrete***, 484 U.S. 539, 543 (1988). Since impasse is a defense to a charge of an unlawful unilateral change, the burden of proof rests on the party asserting that impasse exists. ***North Star Steel Co.***, 305 NLRB 45 (1991). The Respondent has not met its burden of proving that an impasse existed in this case at the time the wage and per diem increases were implemented. The Union was not notified of the changes until long after they occurred, the Parties had only met infrequently in negotiating sessions and there were outstanding information requests that the Respondent had not fulfilled at the time of the increases. I find that the Parties were never at impasse in their negotiations.

The Respondent also notes that the expired contract contains a clause that permits unilateral action with respect to raises. That contract provision states:

> The terms hereof are intended to cover only minimums in wages. The employer may place superior wages into effect and may reduce the same to the minimums herein prescribed without the consent of the union.

This clause, however, gives no authorization for the 2004 unilateral wage increases because it is contained in the Parties' expired collective-bargaining agreement. The Board stated in ***Ironton Publications,*** 321 NLRB 1048 (1996) (a case involving an employer's unilateral grant of merit raises based on an expired contract provision):

> Even assuming that Article V constituted a valid waiver of the Union's statutory right to bargain over merit increases, the waiver did not survive ... expiration of the contract so as to privilege the Respondent's unilateral grant of merit increases.... It is well settled that the waiver of a union's right to bargain does not outlive the contract that contains it, absent some evidence of the parties' intentions to the contrary. ***Buck Creek Coal***, 310 NLRB 1240 fn. 1 (1993); ***Control Services***, 303 NLRB 481, 484 (1991), enfd. 961 F.2d 1568 (3d Cir. 1992); ***Holiday Inn of Victorville***, 284 NLRB 916 (1987).

The Record in this case contains no evidence that the Respondent and the Union ever intended the higher wage contract clause to be effective beyond the term of the collective-bargaining agreement. I find *Ironton Publications,* supra. controlling and conclude that the Respondent's unilateral grant of per diem and wage raises was unlawful and a violation of Section 8(a)(1) and (5) of the Act as alleged.

CONCLUSIONS OF LAW

1. The Respondent, O'Keefe Drilling Co., Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

2. International Association of Operating Engineers, Local 400, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent has violated Section 8(a)(1) and (5) of the Act.

4. The foregoing unfair labor practices constitute unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

5. The Respondent has not violated the Act except as herein specified.

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended:[2]

[2] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommend Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ORDER

The Respondent, O'Keefe Drilling Co., Inc., its officers, agents, successors, and assigns, shall

1. Cease and desist from:

(a) Refusing to bargain collectively with the Union by unilaterally granting employees wage and per diem increases.

(b) Delaying giving the Union relevant and necessary information that it has requested in order to carry out its collective bargaining duties.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Bargain in good faith with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit concerning terms and conditions of employment, including any proposed changes in wages and per diem, before putting such changes into effect.

All drillers, machine shop employees, first helpers and other shop workers employed by Respondent out of its Butte, Montana facility; excluding all other employees, guards and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Butte, Montana, and at all of its work locations outside of the Butte, Montana area, copies of the attached notice marked "Appendix." [3] Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 4, 2003,. ***Excel Container, Inc***., 325 NLRB 17 (1997).

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[3] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated: February 18, 2005

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Albert A. Metz
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board had found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT refuse to bargain in good faith with the International Association of Operating Engineers, Local 400, AFL-CIO, in the following unit of our employees:

All drillers, machine shop employees, first helpers and other shop workers employed by Respondent out of its Butte, Montana facility; excluding all other employees, guards and supervisors as defined in the Act.

WE WILL NOT unilaterally grant unit employees wage and per diem increases.

WE WILL NOT delay giving the Union relevant and necessary information that it has requested in order to carry out its collective bargaining duties.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL bargain in good faith with the Union as the exclusive collective-bargaining representative of the employees concerning terms and conditions of employment, including any proposed changes in wages and per diem, before putting such changes into effect.

O'Keefe Drilling Co., Inc.
(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

915 Second Avenue, Federal Building, Room 2948, Seattle, WA 98174-1078
(206) 220-6300, Hours: 8:15 a.m. to 4:45 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (206) 220-6284.